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STEPHEN T. SULLIVAN
ROBERTS, MLOTKOWSKI, HOBBES, P.C.
7001 E. PARADISE DRIVE
SCOTTSDALE AZ 85254-5175

COPY MAILED

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OFFICE OF PETITIONS

In re Application of   :
Weatherall et al.   :
Application No. 10/681,032   :   ON PETITION
Filed: October 7, 2003   :
Attorney Docket No. 1640-006   :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed November 10, 2006, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance mailed August 22, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on November 23, 2005. A Notice of Abandonment was mailed on January 12, 2006.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:
(1)   the required reply,[1]
(2)   the petition fee,
(3)   a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
(4)   a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.[2]

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[1]   In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

The instant petition lacks item (1). Petitioner submitted a Request for Continued Examination (RCE) and an Information Disclosure Statement (IDS). The application became abandoned for failure to timely pay the issue fee. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. Once the issue fee has been submitted, the instant application will be returned to the Technology Center for consideration of the RCE concurrently filed.

Petitioner is advised that, once submitted, the issue fee cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
                  Commissioner for Patents
                  Post Office Box 1450
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By hand: Customer Window located at:

                  U.S. Patent and Trademark Office
                  Customer Service Window Randolph Building
                  401 Dulany Street
                  Alexandria, VA 22314

By fax: (571) 273-8300
                  ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.
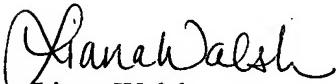
Liana Walsh
Petitions Examiner
Office of Petitions

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[2] See MPEP 711.03(c)(III)(C) and (D).

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*